

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEPHEN RUSIECKI,

Plaintiff,

v.

Case No. 06-10795
Hon. Victoria A. Roberts

JAN TROMBLEY; FAY TAYLOR;
ALLAN KELLY; JODIE GORDON;
and AMY NOVAK,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter is before the Court on Defendants' Motion to dismiss. Because Plaintiff failed to completely exhaust his administrative remedies as to each Defendant, Defendants' Motion is **GRANTED** and the Complaint is **DISMISSED** without prejudice.

Plaintiff is required to exhaust his available administrative remedies prior to filing a claim. 42 USC §1997e. Further, "[f]or a court to find that a prisoner has administratively exhausted a claim against a particular defendant, a prisoner must have alleged mistreatment or misconduct on the part of the defendant at Step I of the [Michigan Department of Corrections] grievance process." *Burton v. Jones*, 321 F.3d 569, 575 (6th Cir. 2003).

Plaintiff attached two Step I grievance forms with his Complaint. Plaintiff specifically mentioned Defendants Trombley, Taylor and Kelly. He also grieves

members of the MDOC mailroom staff that opened his mail outside of his presence.

However, Plaintiff names Amy Novak, an assistant resident unit supervisor, and Jodie Gordon, a general office assistant, as Defendants. Neither of these individuals are grieved in a Step I grievance form. Therefore, Plaintiff did not exhaust his administrative remedies as to these Defendants.

“Complaints that contain both exhausted and non-exhausted claims must be dismissed.” *Rinard v. Luoma*, 440 F.3d 361, 362 (6th Cir. 2006). Accordingly, Plaintiff’s Complaint is **DISMISSED** without prejudice.

IT IS SO ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: May 23, 2006

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on May 23, 2006.

s/Linda Vertriest
Deputy Clerk